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09/811,702	03/19/2001	Matthew Waight	D02542	8838

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/811,702
Filing Date: March 19, 2001
Appellant(s): WAIGHT ET AL.

LARRY T. CULLEN
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/29/06 appealing from the Office action
mailed 12/28/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,251,324	MCMULLAN, JR.	10-1993
6,678,893	JUNG	1-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4, 5, 9, 9, 12 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over **McMullan Jr. (5,251,324)** in view of **Jung (6,678,893)**, (see pages 3-7 of the office action).

(10) Response to Argument

As to Appellant's arguments that the rejection of claims 1, 4, 5, 9, 9, 12 and 13, under 35 U.S.C. 103(a) as being unpatentable over **McMullan Jr. (5,251,324)** in view of **Jung (6,678,893)** is not well founded because "...Neither McMullan Jr. nor Jung, taken alone or in combination, disclose or suggest causing an upstream amplifier of a cable modem to power on during transmission of upstream signals and power off when not transmitting and upstream signals..." that "McMullan does not disclose to generate an amplifier switch signal for connecting that upstream amplifier to an RF tuner for transmission of the upstream data signal to the headend after the amplifier control signal is generated, thereby stabilizing said upstream amplifier" that "...Jung also does not disclose to generate an amplifier switch signal for connecting the upstream amplifier..." that "...Jung does not discloses or suggest to turn on/off an upstream data amplifier..." that "...Jung does not use a separate switching signal after turning on an upstream

amplifier..." that "...There is no motivation to modify McMullan with the disclosure of Jung..." (see pages 6-10 of Appellant's Brief)

In response, Examiner respectfully disagrees. Examiner notes Appellant's arguments, however McMullan discloses a CATV modulator and demodulator or cable modem with Microprocessor 504 (fig.4) or the claimed "MAC chip..." to determine when to transmit upstream control signals, based on instructions sent from the head end; an amplifier 509 (fig.4) or the claimed "upstream amplifier..." which amplifies the upstream signal received from Microprocessor 504, and an anti-babble control 513 or the claimed "complex programmable logic device (CPLD)..." for powering on/off the amplifier 509, where the anti-babble control 513, controls the on/off switching of the amplifier 509 and can switch on/off the connection from the amplifier to the Diplex Filter 511 for transmission of the upstream data signal to the head end via RF (col.11, lines 58-63, col.13, lines 14-41, col.15, lines 54-63). McMullan is silent to stabilizing the upstream amplifier. However, this deficiency in McMullan is disclosed in Jung, which discloses in the same field of endeavor, a cable modem which includes a pilot signal generator 610 and an amplifier 612, where an amplifier control signal is generated to stabilize the upstream amplifier (col.4, lines 19-60 and col.5, lines 8-13). Hence, the 103(a) rejection of claims 1, 4, 5, 9, 9, 12 and 13, using McMullan Jr. in view of Jung is proper as McMullan Jr. in view of Jung meet all the claimed limitations and should be sustained.

With respect to Appellant's arguments that "no motivations to combine..."

Examiner maintains the test for obviousness is not whether the features of a secondary reference may be bodily incorporate into the structure of the primary reference; nor is it

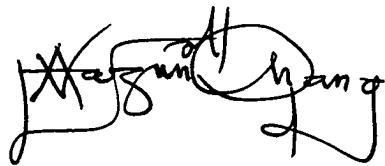
that the claimed invention must be expressly suggested in any one or all the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this instant McMullan discloses a CATV modulator and demodulator or cable modem and in the same field of endeavor, Jung, discloses a cable modem which includes a pilot signal generator 610 and an amplifier 612, where an amplifier control signal is generated to stabilize the upstream amplifier and appropriate motivation was given, i.e., to allow the system to stabilize and allow the head end to receive a constant level signal. Furthermore it appears Appellant's arguments are directed against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.1986). Hence, the combination McMullan Jr. and Jung with respect to claims 1, 4, 5, 9, 9, 12 and 13 meet all limitations, is proper, and should be sustained.

(11) Related Proceeding(s) Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

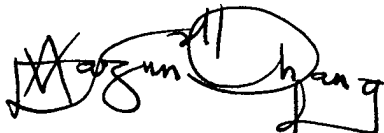
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Annan Q. Shang

Application/Control Number:
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Page 6

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